

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JOSE LUIS CANTERO; MARIA JUANA
QUIZHPI-GUAMAN,

Plaintiffs,

-against-

KEVIN RUSSO, *et al.*,

Defendants.

19-CV-8596 (CM)

ORDER OF DISMISSAL

COLLEEN McMAHON, Chief United States District Judge:

Plaintiff Jose Luis Cantero, proceeding *pro se* and *in forma pauperis* (IFP), filed this complaint alleging that Defendants violated his constitutional rights. Also listed as a plaintiff in the caption of the complaint was Maria Juana Quizhpi-Guaman, Plaintiff's fiancé, but she did not sign the complaint or submit an IFP application, and there were no allegations in the complaint explaining why she was a party to the action.

By order dated September 24, 2019, the Court dismissed the complaint and granted Cantero thirty days' leave to file an amended complaint. That order also dismissed Quizhpi-Guaman as a plaintiff without prejudice to any action she might file on her own behalf.

Cantero and Quizhpi-Guaman then submitted a joint letter stating that Cantero "will no longer proceed in this matter as all claims have been denied," but that Quizhpi-Guaman "will continue to proceed to seek relief for the" constitutional violations set forth in the original complaint. On December 2, 2019, Quizhpi-Guaman filed an amended complaint without an IFP application.

By order dated December 4, 2019, the Court: (1) informed Cantero that if he did not file an amended complaint within fifteen days or otherwise communicate with the Court, the action would be dismissed for failure to state a claim; and (2) informed Quizhpi-Guaman that she

needed to file her own complaint and IFP application, and that if she submitted those documents, they would be opened as a new civil action. Quizhpi-Guaman filed a complaint and IFP application, which were assigned a new case number, 19-CV-11663. The Clerk's Office also docketed those submissions together as a second amended complaint in this case. (ECF No. 12.)

CONCLUSION

For the reasons set forth in the September 24, 2019 order, this case is dismissed for failure to state a claim on which relief may be granted. 28 U.S.C. § 1915(e)(2)(B)(ii).

The Clerk of Court is directed to strike from the docket of this case (19-CV-8596) Quizhpi-Guaman's amended complaint and second amended complaint (ECF Nos. 11, 12), without prejudice to the matter pending under 19-CV-11663.

The Clerk of Court is also directed to docket a copy of this order in 19-CV-11663.

Finally, the Clerk of Court is directed to mail a copy of this order to Cantero and Quizhpi-Guaman, and note service on the docket.

The Court certifies under 28 U.S.C. § 1915(a)(3) that any appeal from this order would not be taken in good faith, and therefore IFP is denied for the purpose of an appeal. *See Coppedge v. United States*, 369 U.S. 438, 444-45 (1962).

SO ORDERED.

Dated: December 27, 2019
New York, New York



COLLEEN McMAHON
Chief United States District Judge